

SENATE BILL 1090

Q3

8lr3938

By: **Senators Peters and Guzzone**

Introduced and read first time: February 12, 2018

Assigned to: Rules

Re-referred to: Budget and Taxation, February 16, 2018

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

CHAPTER _____

1 AN ACT concerning

2 **Corporate Income Tax – Single Sales Factor Apportionment**

3 FOR the purpose of altering the formula used to apportion certain income to the State for
4 certain corporations that carry on a trade or business within and outside the State;
5 authorizing certain corporations to elect to use a certain formula to apportion certain
6 income; requiring certain corporations to apportion certain income from certain
7 intangible investments in a certain manner; requiring the Public Service
8 Commission to report to certain committees of the General Assembly on or before a
9 certain date; repealing obsolete provisions; making conforming changes; providing
10 for the application of this Act; and generally relating to the apportionment formula
11 under the Maryland income tax for corporations.

12 BY repealing and reenacting, with amendments,
13 Article – Tax – General
14 Section 10–402
15 Annotated Code of Maryland
16 (2016 Replacement Volume and 2017 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Tax – General**

20 10–402.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (2) “BANKING ENTITY” MEANS:

4 (I) A BANK, TRUST COMPANY, SAVINGS BANK, OR SAVINGS AND
5 LOAN ASSOCIATION INCORPORATED OR CHARTED UNDER THE LAWS OF A STATE OR
6 THE UNITED STATES; OR

7 (II) A COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS
8 UNDER COMMON CONTROL WITH AN INSTITUTION DESCRIBED UNDER ITEM (I) OF
9 THIS PARAGRAPH.

10 (3) “COMMUNICATION SERVICE” MEANS DISTRIBUTING,
11 MONITORING, PRODUCING, ROUTING, SWITCHING, OR TRANSMITTING A SERVICE
12 THAT:

13 (I) IS DESCRIBED IN § 11-101(M)(4), (5), (6), (7), (8), (9), (10),
14 OR (12) OF THE TAX – GENERAL ARTICLE;

15 (II) IS OR WOULD BE SUBJECT TO THE FEDERAL EXCISE TAX AS
16 DESCRIBED IN § 4251 OF THE INTERNAL REVENUE CODE;

17 (III) IS AN INTERNET ACCESS SERVICE, AS DEFINED IN § 1105 OF
18 THE INTERNET TAX FREEDOM ACT;

19 (IV) IS PROVIDED THROUGH A FACILITY DESCRIBED IN 47 U.S.C.
20 § 522(7);

21 (V) IS PROVIDED BY AN ENTITY DESCRIBED IN 47 U.S.C. §
22 522(13);

23 (VI) IS PROVIDED BY AN ENTITY DESCRIBED IN 47 U.S.C. §
24 153(6);

25 (VII) IS DESCRIBED IN 47 U.S.C. § 153(1) OR (7); OR

26 (VIII) IS DESCRIBED IN 47 U.S.C. § 522(20).

27 ~~(3)~~ (4) “WORLDWIDE HEADQUARTERED COMPANY” MEANS A
28 CORPORATION INCLUDED IN A GROUP OF CORPORATIONS INCLUDING A PARENT
29 CORPORATION THAT:

1 (I) FILED A FORM 10-Q WITH THE SECURITIES AND EXCHANGE
2 COMMISSION FOR THE QUARTERLY PERIOD ENDING JUNE 30, 2017;

3 (II) HAS ITS PRINCIPAL EXECUTIVE OFFICE IN THE STATE; AND

4 (III) EMPLOYS AT ALL TIMES BETWEEN JULY 1, 2017, AND JUNE
5 30, 2020, AT LEAST 500 FULL-TIME EMPLOYEES AT THE PARENT CORPORATION'S
6 PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE STATE.

7 [(a)] (B) In computing Maryland taxable income, a corporation shall allocate
8 Maryland modified income derived from or reasonably attributable to its trade or business
9 in this State in the following manner:

10 (1) if a corporation carries on its trade or business wholly within the State,
11 the corporation shall allocate to the State all of the Maryland modified income of the
12 corporation; and

13 (2) if a corporation carries on its trade or business [in and out of] WITHIN
14 AND OUTSIDE the State, the corporation shall allocate to the State the part of the
15 corporation's Maryland modified income that is derived from or reasonably attributable to
16 the part of its trade or business carried on in the State, in the manner required in
17 subsection [(b), (c), or (d)] (C), (D), OR (E) of this section.

18 [(b)] (C) (1) Except as provided in subsection [(c) or] (d) OR (E) of this section,
19 the part of the corporation's Maryland modified income derived from or reasonably
20 attributable to trade or business carried on in the State may be determined by separate
21 accounting if practicable.

22 (2) If in any taxable year a corporation is permitted or required to use the
23 separate accounting method in determining all or a portion of its Maryland taxable income,
24 the portion that is separately accounted for to Maryland shall be taxable whether or not
25 the Maryland modified income of the corporation for the taxable year is zero or less.

26 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF
27 THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF THE
28 CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR REASONABLY
29 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE SHALL BE
30 DETERMINED USING A SINGLE SALES FACTOR APPORTIONMENT FORMULA, BY
31 MULTIPLYING ITS MARYLAND MODIFIED INCOME BY 100% OF THE SALES FACTOR.

32 (2) (I) EACH YEAR A CORPORATION MAY ELECT TO CALCULATE
33 THE CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR
34 REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE
35 USING THE FORMULA UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IF:

1 1. THE CORPORATION IS ENGAGED IN A TRADE OR
2 BUSINESS THAT IS SUBJECT TO REGULATORY OVERSIGHT OR LICENSURE BY THE
3 PUBLIC SERVICE COMMISSION OR THE FEDERAL ENERGY REGULATORY
4 COMMISSION;

5 2. THE CORPORATION IS ENGAGED IN PROVIDING
6 COMMUNICATION SERVICES WITHIN AND OUTSIDE THE STATE DIRECTLY OR
7 THROUGH THE CORPORATION'S OWNERSHIP OF AN INTEREST IN A PARTNERSHIP
8 THAT PROVIDES COMMUNICATION SERVICES; ~~OR~~

9 3. THE CORPORATION OR GROUP OF CORPORATIONS IS
10 A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE
11 INCOME TAX RETURN FOR THE TAXABLE YEAR; OR

12 4. THE CORPORATION IS A BANKING ENTITY.

13 [(c) (1)] (II) [Except as provided in paragraph (2) of this subsection, if] ~~IF~~
14 SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, IF the trade or business is a
15 unitary business, the part of the corporation's Maryland modified income derived from or
16 reasonably attributable to trade or business carried on in the State [shall] MAY be
17 determined using a 3-factor apportionment fraction:

18 [(i)] 1. the numerator of which is the sum of the property factor,
19 the payroll factor, and twice the sales factor; and

20 [(ii)] 2. the denominator of which is 4.

21 (III) TO DETERMINE UNDER SUBPARAGRAPH (II) OF THIS
22 PARAGRAPH THE MARYLAND MODIFIED INCOME OF A CORPORATION OR GROUP OF
23 CORPORATIONS THAT IS A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A
24 FEDERAL CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR, GROSS
25 INCOME FROM INTANGIBLE INVESTMENTS, INCLUDING DIVIDENDS, INTEREST,
26 ROYALTIES, AND CAPITAL GAINS FROM THE SALE OF INTANGIBLE PROPERTY, SHALL
27 BE INCLUDED IN THE CALCULATION OF THE NUMERATOR BASED ON THE AVERAGE
28 OF THE PROPERTY AND PAYROLL FACTORS.

29 [(2) (i)] In this paragraph:

30 1. “manufacturing corporation” means a domestic or foreign
31 corporation which is primarily engaged in activities that, in accordance with the North
32 American Industrial Classification System (NAICS), United States Manual, United States
33 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
34 33; and

1 2. “manufacturing corporation” does not include a refiner, as
2 defined in § 10–101 of the Business Regulation Article.

3 (ii) If a manufacturing corporation carries on its trade or business
4 ~~in and out of~~ ~~WITHIN AND OUTSIDE~~ the State and the trade or business is a unitary
5 business, the part of the corporation’s Maryland modified income derived from or
6 reasonably attributable to trade or business carried on in the State shall be determined
7 using a single sales factor apportionment formula, by multiplying its Maryland modified
8 income by 100% of the sales factor.

9 (iii) In filing its tax return for each year, a manufacturing corporation
10 shall certify that the NAICS Code reported on its Maryland return is consistent with that
11 reported to other government agencies.

12 (iv) If the Comptroller determines that a corporation has submitted
13 information that incorrectly classifies the corporation as a manufacturing corporation
14 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation
15 in an appropriate manner.

16 (v) The Comptroller, in consultation with the Department of
17 Commerce, shall adopt regulations necessary to carry out the provisions of this subsection.

18 (vi) As part of its tax return for a taxable year beginning after
19 December 31, 2005, but before January 1, 2011, each manufacturing corporation that has
20 more than 25 employees and apportions its income under this paragraph shall submit a
21 report, in the form that the Comptroller requires by regulation, that describes for each
22 taxable year as of the last day of the taxable year the following:

23 1. the difference in tax owed as a result of using the single
24 sales factor apportionment method under this paragraph as compared to the tax owed using
25 the 3–factor double weighted sales factor apportionment method in effect for the last
26 taxable year beginning on or before December 31, 2000;

27 2. volume of sales in the State and worldwide;

28 3. taxable income in the State and worldwide; and

29 4. book value of plant, land, and equipment in the State and
30 worldwide.

31 (vii) On or before March 1, 2009, and March 1 of each year thereafter
32 until March 1, 2013, and notwithstanding any confidentiality requirements, the
33 Comptroller shall prepare and submit to the Governor and, subject to § 2–1246 of the State
34 Government Article, to the General Assembly, a comprehensive report on the use of single
35 sales factor apportionment by manufacturing corporations that provides, at a minimum:

1 1. the number of corporations filing tax returns for the
2 taxable year that ended during the second preceding calendar year that use single sales
3 factor apportionment and the number of such corporations having a Maryland income tax
4 liability for that taxable year;

5 2. the number of corporations paying less in Maryland
6 income tax for that taxable year as a result of using single sales factor apportionment and
7 the aggregate amount of Maryland income tax savings for all such corporations for that
8 taxable year as a result of using single sales factor apportionment; and

9 3. the number of corporations paying more in Maryland
10 income tax for the taxable year as a result of using single sales factor apportionment and
11 the aggregate amount of additional Maryland income tax owed by those corporations for
12 the taxable year as a result of using single sales factor apportionment.]

13 [(3)] ~~(III)~~ (IV) The property factor under [paragraph (1) of this
14 subsection] **SUBPARAGRAPH (II) OF THIS PARAGRAPH** shall include:

15 [(i)] 1. rented and owned real property; and

16 [(ii)] 2. tangible personal property located in the State and used
17 in the trade or business.

18 [(d)] (E) To reflect clearly the income allocable to Maryland, the Comptroller
19 may alter, if circumstances warrant, the methods under subsections [(b) and] (c) **AND (D)**
20 of this section, including:

21 (1) the use of the separate accounting method;

22 (2) the use of the 3-factor double weighted sales factor formula method or
23 the single sales factor formula method;

24 (3) the weight of any factor in the 3-factor formula;

25 (4) the valuation of rented property included in the property factor; and

26 (5) the determination of the extent to which tangible personal property is
27 located in the State.

28 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 31,
29 2018, the Public Service Commission shall report to the Senate Budget and Taxation
30 Committee and the House Ways and Means Committee, in accordance with § 2-1246 of the
31 State Government Article, on:

1 (1) the anticipated reduction in the corporate income tax liability of a
2 corporation described under § 10-402(d)(2)(i)1 of the Tax – General Article making the
3 election authorized under § 10-402(d)(2) of the Tax – General Article; and

4 (2) when and how Maryland public utility companies expect to pass the tax
5 savings on to their customers.

6 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 July 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.